

State of South Dakota

SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

376J0585

SENATE BILL NO. 107

Introduced by: Senators Apa, Albers, Dempster, Duniphan, Duxbury, Ham-Burr, Kelly, Kleven, and Napoli and Representatives Teupel, Adelstein, Bartling, Hackl, Klaudt, Lintz, Pederson (Gordon), Rounds, and Solum

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the computation of
2 time to be served for the failure to pay certain fines, costs, or restitution.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-27-25.5 be amended to read as follows:

5 23A-27-25.5. No defendant may be imprisoned or jailed for failure to pay a fine, costs, ~~and~~
6 or restitution or have his or her suspended prison or jail sentence revoked without a prior
7 hearing. At the hearing, the defendant ~~shall have~~ has the burden of proof to establish to the
8 reasonable satisfaction of the magistrate or circuit judge that ~~he~~ the defendant did not willfully
9 fail to pay the fine, costs, or restitution or that ~~he~~ the defendant did make a bona fide effort to
10 pay the fine, costs, or restitution.

11 Failure by the defendant to make such a showing ~~shall be~~ is grounds for being imprisoned
12 or jailed. If the sentence provided for payment of fine, costs, or restitution only, the term of jail
13 or imprisonment ~~shall~~ may be no longer than the number of days equal to the total amount of
14 the fine, costs, and restitution imposed divided by ~~twenty~~ forty. For purposes of making this
15 computation, any fraction of less than one day shall be dropped from the term of imprisonment.



1 In no event may such imprisonment for failure to pay the fine, costs, and restitution together
2 with all other time served or to be served exceed the maximum allowed by statute.

3 If the defendant establishes nonpayment was not willful, or that ~~he~~ the defendant did make
4 a bona fide effort to pay, ~~he~~ the defendant may not be imprisoned or jailed for nonpayment. The
5 magistrate or circuit judge shall consider other alternatives which take into account the state's
6 interest in punishment and deterrence.

7 The court shall make findings in its decision.